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8 **BEFORE THE**  
9 **BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2013-327

13 **JOHN MALCOLM NEALY**

14 10983 Bluffside Drive  
15 Studio City, CA 91604

16 1525 S. 5th Street W  
17 Missoula, MT 59801

18 Registered Nurse License No. 617972

19 Respondent.

**DEFAULT DECISION AND ORDER**

[Gov. Code, §11520]

20  
21 **FINDINGS OF FACT**

22 1. On or about October 25, 2012, Complainant Louise R. Bailey, M.Ed., R.N., in her  
23 official capacity as the Executive Officer of the Board of Registered Nursing, Department of  
24 Consumer Affairs, filed Accusation No. 2013-327 against John Malcolm Nealy (Respondent)  
25 before the Board of Registered Nursing. (Accusation attached as Exhibit A.)

26 2. On or about April 30, 2003, the Board of Registered Nursing (Board) issued  
27 Registered Nurse License No. 617972 to Respondent. The Registered Nurse License expired on  
28 October 31, 2004, and has not been renewed.

1           3.     On or about October 25, 2012, Respondent was served by Certified and First Class  
2 Mail copies of the Accusation No. 2013-327, Statement to Respondent, Notice of Defense,  
3 Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6,  
4 and 11507.7) at Respondent's address of record which, pursuant to California Code of  
5 Regulations, title 16, section 1409.1, is required to be reported and maintained with the Board.  
6 Respondent's address of record was and is:

7     10983 Bluffside Drive  
8     Studio City, CA 91604

9           4.     On or about November 15, 2012, and November 20, 2012, the documents referenced  
10 in paragraph 3 were returned by the U.S. Postal Service marked "Insufficient Address." The  
11 address on the documents was the same as the address on file with the Board. Respondent failed  
12 to maintain an updated address with the Board and the Board has made attempts to serve the  
13 Respondent at the address on file. Respondent has not made himself available for service and  
14 therefore, has not availed himself of his right to file a notice of defense and appear at hearing.

15           5.     On or about October 25, 2012, Respondent was served by Certified and First Class  
16 Mail copies of the Accusation No. 2013-327, Statement to Respondent, Notice of Defense,  
17 Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6,  
18 and 11507.7) at an additional address:

19     1525 S. 5th Street W  
20     Missoula, MT 59801

21           6.     As of November 21, 2012, neither the Certified nor First Class Mail copies referenced  
22 in paragraph 5 were returned to the Board.

23           7.     Service of the Accusation was effective as a matter of law under the provisions of  
24 Government Code section 11505, subdivision (c) and/or Business & Professions Code section  
25 124.

26           8.     Government Code section 11506 states, in pertinent part:

27                 (c) The respondent shall be entitled to a hearing on the merits if the respondent  
28 files a notice of defense, and the notice shall be deemed a specific denial of all parts  
of the accusation not expressly admitted. Failure to file a notice of defense shall  
constitute a waiver of respondent's right to a hearing, but the agency in its discretion

may nevertheless grant a hearing.

9. Respondent failed to file a Notice of Defense within 15 days after service upon him of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No. 2013-327.

10. California Government Code section 11520 states, in pertinent part:

(a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent.

11. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on the relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as taking official notice of all the investigatory reports, exhibits and statements contained therein on file at the Board's offices regarding the allegations contained in Accusation No. 2013-327, finds that the charges and allegations in Accusation No. 2013-327, are separately and severally, found to be true and correct by clear and convincing evidence.

12. Taking official notice of its own internal records, pursuant to Business and Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation and Enforcement is \$1,037.50 as of November 21, 2012.

#### DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent John Malcolm Nealy has subjected his Registered Nurse License No. 617972 to discipline.

2. The agency has jurisdiction to adjudicate this case by default.

3. The Board of Registered Nursing is authorized to revoke Respondent's Registered Nurse License based upon the following violations alleged in the Accusation which are supported by the evidence contained in the Default Decision Evidence Packet in this case.

a. Respondent is subject to disciplinary action under section 2761, subdivision (a)(4) of the Code in that Respondent was disciplined by the Board of Nursing Department of Labor and Industry State of Montana ("Montana Board"). Specifically, on or about January 18, 2006, the

1 Board issued a Final Order adopting a Stipulation for Probation ("Stipulation") agreed to by the  
2 parties in the disciplinary matter entitled *In the Matter of the Disciplinary Treatment of the*  
3 *License of John Nealy*, Docket No. CC-06-078-NUR. Pursuant to the Stipulation, Respondent's  
4 license was placed on probation for a period of 15 years commencing on the date he is released  
5 from imprisonment. Among other terms and conditions, the Stipulation restricted Respondent's  
6 nursing practice so that the Respondent will have no contact with persons under the age of 18.  
7 The circumstances underlying the disciplinary action are that on or about July 21, 2005, the  
8 Montana Board received a letter from Jean M. Keiley, Senior Probation Officer for the United  
9 States District Court, District of Montana regarding the judgment in a criminal case in which  
10 Respondent was convicted of possession of child pornography. Respondent was sentenced to a  
11 term of 24 months at the Federal Medical Center in Butner, North Carolina. The court  
12 recommended that Respondent receive sex offender treatment and drug treatment while  
13 incarcerated. Upon release from imprisonment, Respondent will be placed under supervision for  
14 a term of 15 years.

15 b. Respondent is subject to disciplinary action under section 2761, subdivision (a) of the  
16 Code on the grounds of unprofessional conduct in that Respondent possessed child pornography.  
17 The conduct is described in more particularity in Accusation No. 2013-327 above, inclusive and  
18 hereby incorporated by reference.

19 c. Respondent is subject to disciplinary action under section 2761, subdivision (d) of the  
20 Code in that Respondent committed violations of the Nursing Practice Act when he was  
21 disciplined by the Montana Board and when he committed unprofessional conduct. The  
22 violations are described in more particularity in Accusation No. 2013-327 above, inclusive and  
23 hereby incorporated by reference.

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ORDER

IT IS SO ORDERED that Registered Nurse License No. 617972, heretofore issued to Respondent John Malcolm Nealy, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on MARCH 29, 2013.

It is so ORDERED FEBRUARY 27, 2013.

  
FOR THE BOARD OF REGISTERED NURSING  
DEPARTMENT OF CONSUMER AFFAIRS

51196470.DOC  
DOJ Matter ID:LA2012507655

Attachment:  
Exhibit A: Accusation No. 2013-327



# Exhibit A

Accusation

1 KAMALA D. HARRIS  
Attorney General of California  
2 GLORIA A. BARRIOS  
Supervising Deputy Attorney General  
3 KATHERINE MESSANA  
Deputy Attorney General  
4 State Bar No. 272953  
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5 Los Angeles, CA 90013  
Telephone: (213) 897-2554  
6 Facsimile: (213) 897-2804  
*Attorneys for Complainant*

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8 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

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Case No. *2013-327*

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13 Studio City, CA 91604

14 1525 S. 5th Street W  
15 Missoula, MT 59801

16 Registered Nurse License No. 617972

17 Respondent.

**A C C U S A T I O N**

18  
19 Complainant alleges:

20 **PARTIES**

21 1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Accusation solely in her  
22 official capacity as the Executive Officer of the Board of Registered Nursing, Department of  
23 Consumer Affairs.

24 2. On or about April 30, 2003, the Board of Registered Nursing issued Registered Nurse  
25 License Number 617972 to John Malcolm Nealy ("Respondent"). The Registered Nurse License  
26 expired on October 31, 2004, and has not been renewed.

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## JURISDICTION AND STATUTORY PROVISIONS

3. This Accusation is brought before the Board of Registered Nursing ("Board"), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code ("Code") unless otherwise indicated.

4. Section 2750 of the Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

6. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Section 2811(b) of the Code provides, in pertinent part, that the Board may renew an expired license at any time within eight years after the expiration.

7. California Code of Regulations, title 16, section 1419.3 provides"

"In the event a licensee does not renew his/her license as provided in Section 2811 of the code, the license expires. A licensee renewing pursuant to this section shall furnish a full set of fingerprints as required by and set out in section 1419(b) as a condition of renewal.

(a) A licensee may renew a license that has not been expired for more than eight years by paying the renewal and penalty fees as specified in Section 1417 and providing evidence of 30 hours of continuing education taken within the prior two-year period.

(b) A licensee may renew a license that has been expired for more than eight years by paying the renewal and penalty fees specified in Section 1417 and providing evidence that he or she holds a current valid active and clear registered nurse license in another state, a United States territory, or Canada, or by passing the Board's current examination for licensure."

8. Section 2761 of the Code states, in pertinent part:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:



(a) Unprofessional conduct, which includes, but is not limited to, the following:

(4) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action against a health care professional license or certificate by another state or territory of the United States, by any other government agency, or by another California health care professional licensing board. A certified copy of the decision or judgment shall be conclusive evidence of that action.

(d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violating of, or conspiring to violate any provision or term of this chapter [the Nursing Practice Act] or regulations adopted pursuant to it."

### **COST RECOVERY**

9. Business and Professions Code section 125.3 provides:

"(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department or before the Osteopathic Medical Board upon request of the entity bringing the proceedings, the administrative law judge may direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

(b) In the case of a disciplined licentiate that is a corporation or a partnership, the order may be made against the licensed corporate entity or licensed partnership.

(c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representative shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.

(d) The administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case when requested pursuant to subdivision (a). The finding of the administrative law judge with regard to costs shall not be reviewable by the board to increase the cost award. The board may reduce or eliminate the cost award, or remand to the administrative law judge if the proposed decision fails to make a finding on costs requested pursuant to subdivision (a).

(e) If an order for recovery of costs is made and timely payment is not made as directed in the board's decision, the board may enforce the order for repayment in any appropriate court. This right of enforcement shall be in addition to any other rights the board may have as to any licentiate to pay costs.

(f) In any action for recovery of costs, proof of the board's decision shall be conclusive proof of the validity of the order of payment and the terms for payment.

(g)(1) Except as provided in paragraph (2), the board shall not renew or

reinstatement the license of any licensee who has failed to pay all of the costs ordered under this section.

(2) Notwithstanding paragraph (1), the board may, in its discretion, conditionally renew or reinstate for a maximum of one year the license of any licensee who demonstrates financial hardship and who enters into a formal agreement with the board to reimburse the board within that one-year period for the unpaid costs.

(h) All costs recovered under this section shall be considered a reimbursement for costs incurred and shall be deposited in the fund of the board recovering the costs to be available upon appropriation by the Legislature.

(i) Nothing in this section shall preclude a board from including the recovery of the costs of investigation and enforcement of a case in any stipulated settlement.

(j) This section does not apply to any board if a specific statutory provision in that board's licensing act provides for recovery of costs in an administrative disciplinary proceeding.

(k) Notwithstanding the provisions of this section, the Medical Board of California shall not request nor obtain from a physician and surgeon, investigation and prosecution costs for a disciplinary proceeding against the licensee. The board shall ensure that this subdivision is revenue neutral with regard to it and that any loss of revenue or increase in costs resulting from this subdivision is offset by an increase in the amount of the initial license fee and the biennial renewal fee, as provided in subdivision (e) of Section 2435."

#### **FIRST CAUSE FOR DISCIPLINE**

##### **(Disciplinary Action by the Montana Board of Nursing )**

10. Respondent is subject to disciplinary action under section 2761, subdivision (a)(4) of the Code in that Respondent was disciplined by the Board of Nursing Department of Labor and Industry State of Montana ("Montana Board"), as follows:

11. On or about January 18, 2006, the Board issued a Final Order adopting a Stipulation for Probation ("Stipulation") agreed to by the parties in the disciplinary matter entitled *In the Matter of the Disciplinary Treatment of the License of John Nealy*, Docket No. CC-06-078-NUR. Pursuant to the Stipulation, Respondent's license was placed on probation for a period of 15 years commencing on the date he is released from imprisonment. Among other terms and conditions, the Stipulation restricted Respondent's nursing practice so that the Respondent will have no contact with persons under the age of 18. The circumstances underlying the disciplinary action are, as follows:

12. On or about July 21, 2005, the Montana Board received a letter from Jean M. Keiley, Senior Probation Officer for the United States District Court, District of Montana regarding the judgment in a criminal case in which Respondent was convicted of possession of child pornography. Respondent was sentenced to a term of 24 months at the Federal Medical Center in Butner, North Carolina. The court recommended that Respondent receive sex offender treatment and drug treatment while incarcerated. Upon release from imprisonment, Respondent will be placed under supervision for a term of 15 years.

**SECOND CAUSE FOR DISCIPLINE**

**(Unprofessional Conduct)**

13. Respondent is subject to disciplinary action under section 2761, subdivision (a) of the Code on the grounds of unprofessional conduct in that Respondent possessed child pornography. The conduct is described in more particularity in paragraph 12 above, inclusive and hereby incorporated by reference.

**THIRD CAUSE FOR DISCIPLINE**

**(Violations of Nursing Practice Act)**

14. Respondent is subject to disciplinary action under section 2761, subdivision (d) of the Code in that Respondent committed violations of the Nursing Practice Act when he was disciplined by the Montana Board and when he committed unprofessional conduct. The violations are described in more particularity in paragraphs 10 through 13 above, inclusive and hereby incorporated by reference.

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**PRAYER**

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 617972, issued to John Malcolm Nealy;
2. Ordering John Malcolm Nealy to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED: OCTOBER 25, 2012

  
for LOUISE R. BAILEY, M.ED., RN  
Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
Complainant

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